IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 18609 of 2007(M)

OS.247/2005 of II ADDL.SUB COURT,TRIVANDRUM
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PETITIONER:

A.RAHIM, S/O ABDUL KARIM, AGED 33 YEARS,
RESIDING AT RAFA MANZIL, NEAR ALUDUMAN H.S.S.,
KAZHAKKOOTTAM, THIRUVANANTHAPURAM.

BY ADV. SMT.K.KUSUMAM

RESPONDENTS:
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1. HAKKIM SHAH @ A.H.SHA, AGED 48 YEARS,
S/O AHMED, RESIDING AT MERA NO.128, T.C..,
NOW RESIDING AT A.H.COMPOUND, MANACAUD,
THIRUVANANTHAPURAM IN MUTTADA VILLAGE IN
THIRUVANANTHAPURAM TALUK,
THIRUVANANTHAPURAM DISTRICT.

2. SHAMSUDEEN, S/O MOHAMMED ABDUL KHADER,
AGED 48 YEARS, RESIDING AT ARAFAT,
NLRA, 51A, NEERAZHI LANE, ULLOOR,
THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 18609 OF 2007

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Dated this the 18th day of September, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in I.A.2000/05 in O.S.247/05. The writ petitioner had filed an application under Order 38 Rule 8 of CPC contending that the attachment passed by the Court is incorrect and it relates to his property. The claimant is not a party to the proceeding. But the Court disposed of the matter holding that the claimant was not present and no evidence adduced and therefore dismissed it for default. Now the petitioner has come forward with a writ petition to set aside that order. I feel that the proper remedy for the party is to get it restored by filing an application before the very same Court which had dismissed it for default. Since, the petitioner had been prosecuting the matter before this Court, if appropriate application is filed with a petition to condone the delay, it may be considered by the Court sympathetically and pass an order in that application.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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